ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

August 5, 2002

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; WC Docket No. 02-112

Dear Ms. Dortch:

Attached are comments of the Association for Local Telecommunications Services ("ALTS") for filing in the above-captioned proceeding.

Sincerely,

/s/

Teresa K. Gaugler

888 17th Street, NW • Suite 900 • Washington D.C. 20006 • Telephone: 202 969 2587 • Fax: 202 969 2581

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements	)	WC Docket No. 02-112
	)	
	)	

COMMENTS OF THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS") hereby files its comments in the above-referenced proceeding in response to the Commission's Notice of Proposed Rulemaking regarding the sunset of statutory requirements under Section 272 imposed on Bell Operating Companies ("BOCs") providing in-region interLATA services.[1] ALTS urges the Commission not to allow these provisions to sunset after the 3-year period provided in Section 272(f)(1). However, if the Commission does decide to allow the structural and nondiscrimination safeguards to sunset, ALTS submits that it must immediately adopt and impose performance metrics and standards for special access and UNE provisioning.

Considering the recent accounting scandals and questionable accounting by BOCs in their ARMIS reporting, the Commission should not sunset the very provisions that might allow regulators to monitor the BOCs' activities to curb anti-competitive behavior. In the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*, the Commission found that the BOCs had the ability and incentive to discriminate against their competitors.[2] The BOCs are

[1] Notice of Proposed Rulemaking, *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC 02-112 (rel. May 24, 2002) ("NPRM").

[2] *Id.* ¶ 3.

no less able or less motivated to discriminate now, despite the passage of almost three years since the first BOC obtained Section 271 approval. Moreover, because of the industry downturn and the exit of many competitive carriers from the market since Verizon gained approval in New York in December 1999, the BOCs may be even more able to act anti-competitively due to the lack of competitive market forces disciplining their behavior.

In the NPRM, the Commission notes that Congress intended Section 272 to apply only temporarily to BOCs after they gained Section 271 approval, specifically for a three-year period unless extended by the Commission.[3] Clearly, Congress expected that the local markets would be open to competition before a BOC obtained 271 approval and further expected that during the following three-year period, competition would flourish such that the safeguards prescribed in Section 272 may not be necessary. However, this has not been the case. Widespread competition has not flourished to such an extent, even in those states where the BOCs are authorized to provide in-region long distance services. While Congress anticipated and wished for successful competition in these markets, it was not certain that Section 272 safeguards could be safely removed after three years, thus it gave the Commission the power and *responsibility* to maintain them while they were still necessary. Competitive carriers continue to receive discriminatory treatment in states where BOCs now provide in-region long distance services, even *with* the Section 272 safeguards in place. To remove those safeguards at this time would do nothing but further encourage anti-competitive behavior and forestall the growth of competition. The benefits of maintaining the safeguards, in order to continue monitoring the BOCs' business practices to eliminate discriminatory and other anti-competitive

[3] *Id.* ¶ 8.

behavior, far outweigh any potential burden to the BOCs in maintaining the safeguards.

If the Commission does decide to allow the structural and nondiscrimination safeguards to sunset, it must immediately adopt and impose performance metrics and standards for special access and UNE provisioning. Even if the Section 272 safeguards are eliminated, the nondiscrimination requirements of the Act remain; therefore, the Commission must, at the very least, adopt reporting requirements, metrics and standards to help ensure the BOCs provide nondiscriminatory access to their facilities. BOCs have the incentive to raise their rivals' costs, to decrease the quality of rivals' service offerings, and to increase the time to deploy competitive services. Properly constructed measurements and standards will enable regulators and industry members to detect such discrimination and, when linked to adequate self-effectuating remedies, might also effectively deter BOCs from engaging in such discrimination.

Without such requirements, the Commission and competitors will have no viable way of monitoring the BOCs' activities to determine if the BOC is favoring its own retail provisioning over its wholesale provisioning to competitors. Performance metrics and remedies will deliver very substantial long-term benefits through increased competition, lower prices, and innovation. These benefits far outweigh any costs of implementing such metrics. Performance measurements create a public record of obligations and oversight and would increase the likelihood of detection, which deters bad behavior. Thus, if the Commission removes the safeguards of Section 272, it must replace them with an alternative means for publicly monitoring the BOCs' behavior.

CONCLUSION

ALTS urges the Commission not to allow the Section 272 provisions to sunset after the 3-year period provided in Section 272(f)(1). However, if the Commission decides to allow the structural and nondiscrimination safeguards to sunset, it must immediately adopt and impose reporting requirements and performance metrics and standards for special access and UNE provisioning.

Respectfully Submitted,

Association for Local Telecommunications Services

By: _/s/Teresa K. Gaugler________
Jonathan Askin
Teresa K. Gaugler
888 17th Street, NW
Washington, DC 20005
(202) 969-2587

August 5, 2002